

**KEY COMMERCIAL TERMS OF
POWER PURCHASE AGREEMENT**

SUMMARY OF PRINCIPAL COMMERCIAL TERMS

This Key Commercial Terms of Power Purchase Agreement (“**Term Sheet**”) is the “Term Sheet” referred to in the Delmarva Power & Light Company Request for Proposals issued on _____, 2006 (the “**RFP**”).

Parties [SERVICE PROVIDER], a _____ (“**Seller**”), and Delmarva Power & Light Company, a Delaware corporation (“**Delmarva**” or “**Buyer**”), referred to individually as “Party” or collectively as “Parties”.

Transaction Seller will provide and make available to Buyer and Buyer will purchase and pay for all Products (as defined below) provided pursuant to the terms of the definitive Power Purchase Agreement entered into by the Parties (the “**Definitive Agreement**”).

Project Any generation resource comprised of New Units (as defined below) located in the State of Delaware with a maximum Contract Capacity of 400 MW or in the case of a wind electricity generator, 600 MW of nameplate capacity (“Project”). The location (street address and county or longitude and latitude), the technology and fuel type of the Project are to be specified by Seller in its response to the RFP. A Project may consist of one or more individual generating units (e.g., wind turbines, simple-cycle combustion turbines, combined-cycle facilities) that may be part of a larger generating facility (that may be larger than 400 MW and that need not consist only of New Units) that are capable of being dispatched without regard for the operation or non-operation of any other generating unit (each, a “**Unit**”), but Projects must be comprised entirely of New Units.

To qualify as a “**New Unit**”, a Unit must be a generation resource which enters into Commercial Operation no earlier than the date of execution of the Definitive Agreement. A “New Unit” also may be the incremental increase in Capacity (but only the incremental increase in Capacity) to an existing generation resource which is completed and resumes Commercial Operation no earlier than the Execution Date (as defined below).

“**Commercial Operation**” is defined to mean that all commissioning

activities have been completed, all performance testing has been satisfactorily completed, that the Project is capable of regular commercial operation as reasonably determined by Buyer, and that the Project has been accepted as a Capacity Resource by PJM. In addition, the Project must demonstrate a net Capacity of not less than 95% of the maximum Contract Capacity specified in Seller's offer [Kindly define for wind generators] (for less commercially established technologies, such as IGCC, Seller shall be allowed in its Offer to propose, subject to Buyer's approval, a percentage lower than 95% if consistent with the definitions of "Substantial Completion" and "Facility Acceptance" in their anticipated construction and/or financing agreements).

Seller understands and agrees that Buyer's percentage entitlement (which, depending on Seller's proposal, may be less than 100%) to all Product from all Units comprising a Project must be made available exclusively to Buyer pursuant to the Definitive Agreement except as otherwise expressly provided by the Definitive Agreement.

**Contract Term
and Services
Term**

The "**Contract Term**" will commence upon execution and delivery by both Parties of the Definitive Agreement and continue until final settlement (after the end of the Services Term, as defined below). The date the Definitive Agreement is executed and delivered by both Parties and Seller posts the initial installment of the Development Period Security (as defined below) is the "**Execution Date**." The Definitive Agreement will include conditions relating to Buyer's receipt of Regulatory Approval (as defined below) which must be satisfied prior to the time the Parties' remaining obligations become effective. Only upon satisfaction of such conditions will the "**Effective Date**" be deemed to have occurred.

The "**Services Term**" will be the period during which Seller is obligated to provide Products to Buyer. The Definitive Agreement will specify the length of the Services Term. The Services Term shall commence on the Initial Delivery Date (as defined below) and continue for a minimum of ten (10) years and a maximum of twenty-five (25) years. The Initial Delivery Date may be no earlier than the Effective Date and the Guaranteed Initial Delivery Date may be no later than June 1, 2013.

Product

"**Product**" shall mean, collectively, Energy, Capacity, Ancillary Services and Environmental Attributes, all as defined herein. Seller may not enter into any agreement or arrangement under which Product attributable to the Project may be claimed by any person other than Buyer for purposes of satisfying such person's obligations to PJM Interconnection, LLC ("**PJM**") or any other independent system operator having jurisdiction over such person or the Units. Following the occurrence of the Initial Delivery Date,

Seller's obligation to deliver Product under a Unit contingent Offer will be dependent upon the availability of the Project, subject to Contract Price adjustments and the possibility of default for specified levels of unavailability over time. For Sellers which opt to offer Firm power, if the Project is not available at any time during the Services Term, such Sellers will be obligated to provide Product from other resources or pay cover damages for replacement Products.

"Capacity": Seller's Offer should set forth a monthly schedule showing the maximum MWs of Net Capability rated for the applicable summer or winter rating period (as defined by PJM) that the Seller is offering to make available to Buyer in each month of the Services Term (**"Contract Capacity"**). The highest Contract Capacity specified by Seller for any month is referred to herein as the **"Guaranteed Capacity."**

The amount of Capacity that Buyer will pay for each month will be the lesser of the Contract Capacity and the summer Net Capability rating of the Project as determined by PJM from time to time, (**"Monthly Contract Capacity"**), with payments for Monthly Contract Capacity adjusted by the Availability Adjustment mechanism set forth in Attachment 3. For wind energy projects and other intermittent renewable energy projects (solar and hydro), Buyer will pay Seller for the amount of Unforced Capacity from Buyer's entitlement to Contract Capacity from the Project as determined by PJM from time to time, and as adjusted upward or downward according to PJM rules.

"Energy": All electric energy produced by the Unit(s) up to the Monthly Contract Capacity defined above. Energy shall be offered consistent with the type of Project proposed by Seller (i.e., baseload, intermediate, load-following or peaking).

"Ancillary Services": All products deemed to be "Ancillary Services" by PJM and/or the Federal Energy Regulatory Commission (**"FERC"**) as of the execution date of the PPA or a future date during the Contract Term, including but not limited to reactive power, regulation (including load following), spinning reserves, non-spinning reserves, and replacement reserves associated with the Unit(s).. Seller should identify all Ancillary Services that the Project is capable of providing. With respect to any Ancillary Service that is created after the execution of the PPA, Seller shall be required to provide the Ancillary Service (a) to the extent it can be provided by a project without any material increase in operating or capital costs or material increase in revenues or (b) it can be provided by a project and there are material costs and/or reduced revenues associated with providing the service and the Buyer agrees to hold the Seller harmless in order to secure the delivery of the future product.

“**Environmental Attributes**” means (a) Renewable Energy Credits and the Generation Attributes of the Project that the Renewable Energy Credits represent, as both terms are defined by the PSC’s Rules and Procedures to Implement the Renewable Energy Portfolio Standard, and (b) and (b) any property rights which Seller has or will have arising out of avoided emissions of pollutants to the air, soil or water due to the operation of the Project including but not limited to avoided emissions of (A) oxides of nitrogen, sulfur, or carbon, (B) particulate matter, soot, or mercury, and/or (C) carbon dioxide, methane and other greenhouse gases that may be regulated by the Regional Greenhouse Gas Initiative and or that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere. [Please explain why the definition tied to “UNFCCC” and the “Kyoto Protocol” were deleted in the September 27 redline.]

**Resource
Adequacy**

The Public Service Commission of the State of Delaware (the “**PSC**”) or PJM or a successor control area operator may, during the Contract Term, may put into place a Resource Adequacy (“**RA**”) requirement whereby eligibility to credit Capacity toward the RA requirement may be determined by identifying specific Unit(s) or a combination of Unit(s). Seller agrees that the Unit(s) or combination of Units comprising the Project will meet all requirements necessary to qualify as a resource capable of contributing to Buyer’s RA requirement and will consent in the Definitive Agreement to take such measures as necessary to qualify as a resource that counts toward Buyer’s RA Requirement; provided, however, in the event the Seller is required to incur any material increase in operating or capital costs, or any material decrease in revenues, in order to meet such RA requirement, Buyer shall have the option to waive or to enforce compliance with the RA requirement, and shall, in the latter case, hold the Seller harmless against the financial effects of compliance with the RA requirement. In the event that the parties disagree on the amount needed to keep the Seller in the same financial position, the matter would be resolved in accordance with the contract dispute resolution mechanism. In addition, Seller agrees to comply with all associated bidding/dispatch requirements imposed through either PJM market design and tariffs, the PSC, or FERC. Such bidding requirements may be imposed in the day ahead, hour ahead or real time timeframe. Buyer will also have exclusive rights to all RA related products such as capacity tags, capacity credits, or installed capacity (“**ICAP**”) products pertaining to Buyer’s entitlement in the Products from the Project. Subject to the foregoing, Seller shall comply with any PSC, PJM or FERC requirements for meeting RA.

**Commencement
of Services**

The “**Initial Delivery Date**” is the date on which the Seller's obligation to make Capacity available and to deliver Energy and Ancillary Services (as scheduled) commences, and Compensation payable by Buyer to Seller begins to accrue. The Initial Delivery Date shall not occur until the Seller has satisfied all conditions precedent to the Initial Delivery Date, which in the case of new generation, shall include (at a minimum):

- completion of the electric transmission interconnections necessary for delivery of electricity to the Buyer at the Delivery Point;
- completion of all equipment necessary for fuel delivery;
- demonstration that Seller holds all required environmental permits
- demonstration that Seller has interconnection and transmission services agreements in place that are reasonably satisfactory to Buyer;
- demonstration that Seller has fuel supply and transportation agreements in place that are reasonably satisfactory to Buyer;
- each Unit has achieved Commercial Operation; and
- Seller has posted any applicable Collateral Requirement (as set forth in the “Credit Requirements” section below) required to be provided as of the Initial Delivery Date.

**Development
Period Security**

On the Execution Date Seller shall be required to post collateral in the form of an irrevocable standby letter of credit acceptable in form and content to Buyer from an issuer satisfying the requirements set forth in the RFP (a “**Letter of Credit**”) to secure Seller's obligations in the period between the Execution Date and the Initial Delivery Date (“**Development Period Security**”). [Bluewater believes that Buyer and Seller should have reciprocal LC requirements. Bluewater reiterates its proposal that a second lien be utilized in lieu of LC support. Bluewater believes that a \$100/kw cap on Operational Security as being more reasonable than the IC's proposed cap. The Development Period Security to be provided on the Execution Date shall be in an amount equal to the product of (x) \$50 (\$20 for intermittent renewable energy projects), multiplied by (y) the Guaranteed Capacity (expressed in kilowatts). By not later than fifteen (15) days after the Effective Date, the amount of the Development Period Security shall be increased to equal the sum of (i) the product of (x) \$100 (\$40 for intermittent renewable energy projects), multiplied by (y) the Guaranteed Capacity (expressed in kilowatts). Failure of Seller to provide the increased amount of Development Period Security shall allow Buyer to terminate the Definitive Agreement and retain the initial installment of Development Period Security as liquidated damages.

**Early
Termination**

Buyer will allow Seller to terminate its Definitive Agreement and Buyer will return the Delivery Date Security to Seller less \$50 per kW (\$20 per kW for

**Rights for
Permitting
Failures**

intermittent renewable energy projects) of Guaranteed Capacity as liquidated damages if Seller, after making all commercially reasonable efforts to do so, is unable to secure the necessary permits and other governmental approvals required for construction of the Project within the permit time period, which shall commence on the date Buyer notifies Seller that it has received Regulatory Approval (as defined below) for its entry into and performance under the Definitive Agreement and shall end after the passage of the number of months specified by Seller in Seller's Offer as the permitting duration (such duration, the "Permit Duration") (such ending date, as may be extended, the "**Permitting Completion Deadline**"). The Permit Duration proposed by Seller shall be consistent with industry standards, as reasonably determined by Buyer, and with the Guaranteed IDD Date. If Seller notifies Buyer that Seller has been unable to timely secure the necessary permits and governmental approvals due to events of Force Majeure, the Permitting Completion Deadline will be extended if due to an event of Force Majeure, without penalty to the Seller, for up to an additional six (6) months. Alternatively, if Seller notifies Buyer that Seller has been unable to timely secure the necessary permits and governmental approvals for reasons other than Force Majeure, or if the limit on permit Force Majeure is reached, Buyer will permit Seller to extend the Permitting Completion Deadline by six (6) months if Seller agrees, going forward, to pay the full amount of the Development Period Security to Buyer as liquidated damages should it be unable to obtain the necessary permits and governmental approvals by the extended Permitting Completion Deadline.

**Construction
Schedule**

At least three (3) months prior to issuance of the notice to proceed by Seller to its construction contractor, Seller shall provide Buyer a construction schedule. Seller shall provide Buyer monthly progress reports, including projected time to completion, and Buyer shall have the right, during business hours and upon reasonable notice, to inspect the construction site and monitor construction of the Project.

**Guaranteed
Initial Delivery
Date and Delay
Damages**

Seller guarantees that the Initial Delivery Date will occur by not later than _____ (the "**Guaranteed Initial Delivery Date**").

Subject to Force Majeure delays not to exceed twelve (12) months in the aggregate, for each day (or part thereof) that the Initial Delivery Date is delayed beyond the Guaranteed Initial Delivery Date, the Seller shall pay to Buyer liquidated damages equal to \$_____ [determined using \$0.2333 per kW of Guaranteed Capacity] ("**Delay Damages**"). Delay Damages shall be payable monthly in arrears. The maximum amount of Delay Damages payable by Seller shall be \$_____ [determined using daily Delay Damages amount multiplied by 365] ("**Maximum Delay Damages**").

The Maximum Delay Damages shall apply to limit aggregate delay damages whether incurred due to failure to meet interim construction deadlines or due to failure to achieve the Initial Delivery Date by the Guaranteed Initial Delivery Date, but is not a limit on damages due to Buyer's right to terminate due to Seller's failure achieve the Initial Delivery Date by the Guaranteed Initial Delivery Date.

In addition to receiving Delay Damages, subject to Force Majeure delays not to exceed twelve (12) months in the aggregate, if the Initial Delivery Date is delayed beyond the date that is no more than twelve (12) months after the Guaranteed Initial Delivery Date (the "**Date Certain**"), Buyer may elect to terminate the Definitive Agreement without liability or further obligation of any kind on the part of Buyer, and the Seller shall pay a termination fee equal to \$_____ [determined using \$100 per kW of Guaranteed Capacity] as liquidated damages to Buyer (the "**Termination Fee**"). With the exception of Delay Damages,

**Critical
Milestones**

The Definitive Agreement will specify dates by which certain critical milestones for the development and construction of the Project must be achieved, which critical milestones shall include closing of debt or other third-party financing (unless Seller demonstrates as of the Effective Date that it has equity financing sufficient to cause the project to achieve the Initial Delivery Date), issuance of a full notice to proceed to the construction contractor, delivery of generators to the Project site, and energization of the Project). Seller's failure to achieve a critical milestone within twelve months of the specified date for reasons not due to Force Majeure shall constitute an event of default under the Definitive Agreement allowing Buyer to terminate and to retain the full amount of Development Period Security as liquidated damages.

Scheduling

Seller shall be obligated to perform all scheduling of the Unit(s) in compliance with PJM protocols.

**Operational
Constraints**

The operational constraints of the Unit(s) shall be those set forth in Seller's response to the RFP. Seller's obligation to provide Product as of any given time would be based on the Unit's(s') operational constraints and availability, unless Seller has exercised the option to provide Firm power in its Offer. For Firm power, the unavailability of a Unit dispatched within such operational constraints will not excuse Seller's obligation to deliver Products as otherwise required under the Definitive Agreement.

Operating

Prior to the Initial Delivery Date, the Parties shall mutually develop written

Procedures procedures governing operations, not in contravention or amendment of any right or obligation set forth herein or in the Definitive Agreement, including, but not be limited to, (1) procedures for scheduling, (2) methods of day-to-day communications, (3) key personnel lists, (4) record keeping and (5) such other procedures and protocols as the Parties deem appropriate for implementation of this Agreement (the “**Operating Procedures**”). Failure to agree on the Operating Procedures shall be resolved in accordance with the dispute resolution procedures, but shall not relieve either of the Parties of its other obligations under this Agreement.

Interconnection Point and Delivery Point The “**Interconnection Point**” of the Project will be the PJM bus in the State of Delaware to which the generator is electrically connected, or the closest location thereto in the State of Delaware monitored for Locational Marginal Price by PJM. The “**Delivery Point**” of all Energy delivered under the Definitive Agreement shall be the Interconnection Point, or in the case of an offshore wind electricity generator, the “Delivery Point” shall be the point where the interconnection cable crosses into the waters of the State of Delaware at three (3) Nautical Miles from Delaware’s coastline.

Comment [PDM1]: This matches the Long Island Power Authority offshore wind RFP language, available from LIPA.

Deleted: .

Electric Interconnection and Transmission Service Seller shall be responsible for all costs related to upgrades to transmission facilities and construction of interconnection facilities required to interconnect the Unit(s) to the Interconnection Point and enable Energy to be delivered to the grid at the Delivery Point, consistent with all standards and provisions set forth by the FERC, PJM or any other applicable governing agency and the interconnecting transmission owner.

Seller will be responsible for funding any upgrade(s) to the transmission network as required by PJM. Regardless of whether Buyer is the interconnecting transmission owner, Delmarva in its capacity as Buyer shall not be responsible for Seller's interconnection arrangements or costs.

Seller shall be responsible for the costs of delivering its power to the Delivery Point consistent with all standards and provisions set forth by the FERC, PJM or any other applicable governing agency or tariff.

Fuel Interconnection For gas-fired Projects, Seller shall be responsible for all costs related to upgrades to transmission facilities and construction of interconnection facilities required to interconnect the Unit(s) to the natural gas system and enable delivery of fuel to the Unit(s), consistent with all standards and provisions set forth by the FERC or any other applicable governing agency. For non-gas-fired Projects, Seller shall be responsible for all fuel delivery and storage facilities.

Fuel Supply and Transportation

Seller shall be responsible for all arrangements for and costs of fuel supply and delivery, including all ancillary services such as balancing or storage. (The preceding is without prejudice to such pricing proposals as Seller wishes to offer, which may tie the price of energy to the cost of fuel).

Maintenance Obligations

Seller will be responsible for all operation and maintenance of the Unit(s) and will bear all costs related thereto.

Compensation:

A. **“Capacity Payment Rate”**—specify the annual values (or formulas to determine values) in the response to the RFP as \$ per kW-year (price to include Ancillary Services, products other than Renewable Energy Credits and Environmental Attributes) to be paid in equal monthly increments. [Why are Environmental Attributes not valued separately in the Power Purchase Agreement. They are given a wide variety of values greater than zero in public and private electricity contracts and other compliance markets throughout the U.S. and are very likely to have greater value in the future. Environmental Attributes should be counted in the same category as RECs.]

Deleted: and Environmental Attribute

B. **“Energy Rate”**—specify the rate or rates (or formulas to determine rates) in the response to the RFP as \$ per MWh.

C. **“Renewable Energy Credits” (or “RECs”)**—if the Unit qualifies as an Eligible Energy Resource as defined in the DPSC’s Rules and Procedures to Implement the Renewable Energy Portfolio Standard, specify the rate or rates in the response to the RFP as \$ per MWh. Buyer’s obligation to purchase RECs shall be subject to a maximum volume limitation, which is [or shall be] set forth in the RFP. [As project redesigns are expensive and time consuming, kindly specify the amounts and time periods of RECs as soon as possible]

The monthly **“Capacity Payment”** is (x) one-twelfth (1/12th) of the Capacity Payment Rate, multiplied by (y) the Monthly Contract Capacity for the specific month (for intermittent renewable energy projects—Unforced Capacity as determined by PJM will be used), multiplied by (z) the Period-Specific Availability Adjustment Factor set forth in Attachment 3 hereto (not used for intermittent renewable energy projects). The Capacity Payment will be paid monthly, in arrears, for each month of the Services Term.

“Energy Payment”: For each month of the Services Term, the Energy Payment will equal the Energy Rate multiplied by the amount of Energy scheduled [if applicable to wind electricity generators] and received by Buyer in the applicable month.

Billing and Payment

Each month during the Services Term, Seller shall invoice Buyer, in arrears, for all Compensation amounts. Each month during the Services Term, Buyer shall invoice Seller, in arrears, for any amount owed, if any under the Definitive Agreement. If each Party is required to pay the other an amount in the same month pursuant to the Definitive Agreement, then the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Payment of all undisputed amounts owed shall be due by the later of ten days after delivery of the owed Party's invoice or the twentieth day of the month (or, in each case, if the due date is not a business day, on the next following business day). The Parties shall resolve disputed amounts pursuant to a dispute resolution process to be included in the Definitive Agreement. In the event of termination, Buyer, as calculation agent, shall determine the amount of the Termination Payment, and either (a) if Seller is the owing Party, provide Seller an invoice within ten (10) business days of the termination date, which shall be due within ten (10) business days after receipt; or (b) if Buyer is the owing Party, pay Seller the Termination Payment within twenty (20) business days of the termination date.

Events of Default

An Event of Default with respect to a Party shall exist under the Definitive Agreement upon the occurrence of any of the following:

Applicable only to Seller:

- Failure to deliver any Product produced by the Unit(s) to Buyer as required under the Definitive Agreement and delivery of such Product without right to any third party where such failure continues for three (3) days after notice thereof is received, except for failures to deliver due to storms or other Force Majeure events.
- Any material asset of Seller is taken upon execution or by other process of law directed against Seller or if taken upon or subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within twenty-one (21) days after its levy.
- Upon the occurrence of any material misrepresentation or omission in any metering or any report or notice of availability required to be made or delivered by Seller to Buyer by the provisions of the Definitive Agreement, which misrepresentation or omission is caused by Seller's willful misconduct, gross negligence or bad faith.
- Seller fails to post, supplement or renew when due the Development Period Security and such failure continues for five (5) days after notice thereof is received, except for the failure to post the remainder of the Development Security fifteen (15) days after the Effective Date, for which failure, no notice is required.

- Seller fails to comply with Resource Adequacy requirement as and to the extent required by the Definitive Agreement, which failure continues for sixty (60) days after notice thereof is received.
- During the Services Term, the Equivalent Availability Factor of the project is below 60 percent for a period of twelve (12) consecutive months for a reason other than Force Majeure and such failure continues for the next following six (6) consecutive months;
- During the Services Term, the Equivalent Availability Factor of the project is below 60% for a period of twenty-four (24) consecutive months due to an event of Force Majeure.
- Seller fails to comply with Credit Requirement provisions of the Definitive Agreement and such failure continues for ten (10) days after notice thereof is received.

Applicable to both Parties:

- A Party fails to pay an amount when due and such failure continues for ten (10) business days after notice thereof is received.
- A Party fails to perform any of its material obligations under the Definitive Agreement and such default continues for thirty (30) Days after notice thereof is received, specifying the Event of Default; provided, however, that such period shall be extended for an additional reasonable period if cure cannot be effected in thirty (30) days and if corrective action is instituted by the defaulting Party within the thirty (30)-day period and so long as such action is diligently pursued until such default is corrected, but in any event within ninety (90) days.
- A Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver, or custodian of its assets (including, in the case of Seller for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws.
- Absent the consent or acquiescence of a Party, appointment of a trustee, receiver, or custodian of its assets (including in the case of a Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within sixty (60) days.
- Any governmental approval necessary for a Party to be able to perform all of the transactions contemplated by the Definitive Agreement expires, or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation, or suspension thereof, by reason of the action or inaction of such Party and such expiration, revocation or

suspension creates a material adverse impact on the other Party.

- Upon the occurrence of any material breach of any representation, covenant, or warranty made by a Party made in the Definitive Agreement, thirty (30) days after the written notice from the other Party that any material representation, covenant or warranty made in the Definitive Agreement is false, misleading or erroneous in any material respect without the breach having been cured.

Remedies:

Upon the occurrence of an Event of Default, the non-Defaulting Party may elect to exercise any or all remedies available to it, including but not limited to, the following:

- Terminate the Definitive Agreement.
- Prior to the commencement of construction by Seller, if Buyer is the Defaulting Party, Buyer will pay a Termination Payment equal to the costs reasonably incurred by Seller in the development of the Project plus a Breakage Fee equal to [\$10/kW] multiplied by the Guaranteed Capacity.
- Prior to the Initial Delivery Date, if Seller is the Defaulting Party, Seller will pay a Termination Payment equal to the undrawn portion of the Development Period Security..
- Prior to the Initial Delivery Date, and after the commencement of construction by Seller, if Buyer is the Defaulting Party, Buyer will pay a Termination Payment as if such had occurred after the Initial Delivery Date.
- On and after the Initial Delivery Date, the Termination Payment will be the aggregate of all Settlement Amounts netted into a single amount, where the Settlement Amount is equal to the Losses or Gains, and Costs, expressed in U.S. dollars, which the Non-Defaulting Party incurs as a result of the liquidation of the transaction, as of the effective date of termination, where the Settlement Amount, Losses, Gain and Costs, have the meanings set forth in the Master Power Purchase & Sale Agreement published by EEI, or a similar master agreement. The Termination Payment shall be due to the Non-Defaulting Party in all cases and in no event will the Non-Defaulting Party be required to pay its Gain to the Defaulting Party.
- Subject to the terms of the Definitive Agreement, exercise any other right or remedy available at law or in equity, other than specific performance.
- The non-Defaulting Party shall be entitled, at its option and in its discretion, to setoff against any amounts owed to the Defaulting Party by the non-Defaulting Party under the Definitive Agreement or otherwise any amounts payable by the Defaulting Party to the non-Defaulting Party under the Definitive Agreement or otherwise. This

section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law or otherwise). Notwithstanding any provision to the contrary contained in the Definitive Agreement, the non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under this Definitive Agreement until the non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that all obligations of any kind whatsoever of the Defaulting Party to make any payments to the non-Defaulting Party under the Definitive Agreement or otherwise which are due and payable as of the effective date of termination have been fully and finally performed.

The rights and remedies of a Party pursuant to the Remedies Section of the Definitive Agreement shall be cumulative and in addition to the rights of the Parties otherwise provided in the Definitive Agreement.

Prior to the exercise by Buyer of any right to terminate the Definitive Agreement, Buyer shall provide all required notices to Seller, and, at the same time, to any lender to Seller of which Buyer shall have notice. Buyer shall accord any such lender the same opportunity to cure, on behalf of Seller, any default of Seller giving rise to such right to terminate as provided to Seller under the Definitive Agreement.

Force Majeure

“**Force Majeure**” shall mean any event or circumstance to the extent beyond the reasonable control of, and not the result of the fault or negligence of, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, including but not limited to: (1) acts of God, including but not limited to landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather related events; (2) fire or explosions; (3) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Initial Delivery Date; (4) sabotage, riot, acts of terrorism, war and acts of public enemy; (5) restraint by court order or other governmental authority; or (6) failure or delay, notwithstanding all commercially reasonable efforts of a Party, in obtaining required Permits in a final, non-appealable form, provided that such failure or delay does not exceed six (6) months in the aggregate with respect to such Party. Force Majeure shall not include (i) a failure of performance of any Third Party, including any party providing electric transmission service or natural gas transportation, except to the extent that such failure was caused by an event that would otherwise satisfy

the definition of a Force Majeure event as defined above; (ii) economic hardship; and (iii) lack of need for, or the availability of more favorable terms for the purchase or sale of, any Product during the Services Term; (iv) failure to timely apply for Permits or (v) breakage or malfunction of equipment, (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above).

A Party shall not be considered to be in default in the performance of its obligations under the Definitive Agreement to the extent that the failure or delay of its performance is due to an event of Force Majeure; and the non-affected Party shall be excused from its corresponding performance obligations to the extent due to the affected Party's failure or delay of performance. Notwithstanding the foregoing, a failure to make payments accrued prior to the event of Force Majeure when due shall not be excused.

Metering

In accordance with applicable PJM procedures and requirements, Seller shall install, maintain, operate and replace (as needed) electric meters and back-up meters at the Delivery Point (or as close to Delivery Point as is practical) to determine energy at its sole cost and expense. The meters will be sealed by both Parties, which seals will only be broken by both Parties for inspection, testing or adjustment. The electric meters shall meet all specifications of PJM and shall be checked annually by Seller, who shall provide Buyer with not less than thirty (30) days prior written notice of such tests. Buyer will have the right to have a representative(s) present during such tests.

Either Party may from time to time request a retest of the meters if it reasonably believes that the meters are not accurate within the tolerance limits established by PJM or the applicable service provider. The requesting Party shall pay for any such retest and shall provide the other Party with not less than fourteen (14) days prior notice of such retest. Such other Party will have the right to have a representative present during such retest. If any tested or retested meter is found to be not accurate within the tolerance limits established by PJM or the applicable service provider, Seller shall promptly arrange for the correction or replacement of the meter, at its expense, and the Parties shall use the measurements from the back-up meters to determine the amount of the inaccuracy. If the back-up meters are found to be not accurate within the tolerance limits and the Parties cannot otherwise agree as to the amount of the inaccuracy, the inaccuracy will be deemed to have occurred during the period from the date of discovery of the inaccuracy to the earlier of (a) one-half of the period from such discovery to the date of the last testing or retesting of the meters or (b) one hundred eighty (180) days. Any amounts due by Buyer or to be refunded by Seller as a result of any meter that is not accurate within the tolerance limits will be invoiced by such Party within fifteen (15) days of the discovery of such

inaccuracy, with payment due within thirty (30) days.

To support invoice settlement purposes, Seller shall provide Buyer with access to all real-time meters, billing meters and back-up meters (i.e., all metering). Seller shall authorize Buyer to view the Project's on-line meter data and any gas real-time metering.

**Compliance with Law,
Environmental Risk and Indemnity**

Seller, as owner and operator of the Project, will be responsible for complying with all applicable requirements of law, PJM and NERC, whether imposed pursuant to existing law or pursuant to changes enacted or implemented during the Contract Term, including all risks of environmental matters relating to the Unit(s) or the Project site. Seller will indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable law, or PJM or NERC requirements. For the avoidance of doubt, Seller will be responsible for procuring, at its expense, all permits, governmental approvals and emissions credits and allowances required for operation of the Unit(s) in compliance with law. [This recent addition, just included in the September 27, 2006 redline violates the letter and spirit of HB 6, which lead to this Draft RFP. In addition, it contradicts the other parts of this RFP that speak to minimizing environmental impacts. A pass-through seriously contravenes the clear Delaware Legislature intent to promote "price stability" and reductions in "environmental impacts"]. Bluewater Wind most respectfully but strongly urges the drafters of the final RFP to look closely at this provision in light of the HB 6 and the clear Legislative intent. On a practical and fiduciary level for the ratepayers of Delaware, this "pass through" will likely have severe, harmful financial and environmental consequences.

Comment [EGS2]: This allowance should be stricken as it in direct conflict with a primary purpose of the Act and this resulting RFP. The Act was in response to sharply increasing electric rates that followed a period of rate increase deferrals resulting from utility deregulation. Retail consumers were unprepared for rate increases of this magnitude and sought relief from their elected representatives. One of the key objectives of the Act was to avoid future disruptions of this nature by implementing provisions to help stabilize electricity pricing and utilization for Delaware consumers for both the short and long term.

Allowing future Btu or carbon taxes on fossil fuel burning facilities be treated as a "pass-through" addition to the cost of energy is in direct contradiction to the purposes of this Act. This approach leaves ratepayers exposed to the same kind of rate shocks the Act was designed to guard against.

While no one can say with certainty what these additional costs will be, it appears very likely there will be increased costs associated with fossil fuel combustion. Delaware ratepayers should not be left exposed to this uncertain future. The Commission should require applicants to demonstrate that they will provide an efficient and reliable source of power at a stable price for the life of the power purchase agreement.

Deleted: Notwithstanding the foregoing, in the event that a change in law occurs which imposes future environmental compliance costs in the form of a Btu or carbon tax, Seller and Buyer shall treat the tax as a "pass-through" addition to the cost of energy under the Definitive Agreement.

Credit Requirements (as of the Initial Delivery Date)

The amount of unsecured credit to be extended to Seller will be determined pursuant to Attachment 1 based on the senior unsecured long-term debt rating of Seller or its affiliate guarantying Seller's obligations (the "**Seller Credit Limit**"). The Seller Credit Limit may be set at zero, and may not exceed \$50,000,000. Buyer intends to compute a market value for the Products sold under the Definitive Agreement, with weekly collateral posting requirements (in excess of the Seller Credit Limit) tied to changes in market value of the Products. Without regard for the Seller Credit Limit in effect at any time, from and after the Initial Delivery Date Seller must provide Buyer a Letter of Credit in an amount equal to 10% of the then-effective Collateral Requirement (as defined below) (the "**Minimum Liquid Collateral**"). In addition to the Minimum Liquid Collateral, Seller will provide Buyer a Letter of Credit in an amount equal to the positive

difference, if any, between the Collateral Requirement (minus the Minimum Liquid Collateral amount) and the Seller Credit Limit (the “**Additional Liquid Collateral**”). During each week during the Services Term, the MtM Value shall be calculated according to the formula set forth in Attachment 2 for the next twenty-four (24) months. Buyer shall be the calculation agent and will provide notice weekly to Seller of the Collateral Requirement amount to be posted by Seller. Within three (3) business day of such notice, Seller shall post the Additional Liquid Collateral or Seller shall return such collateral previously posted that is in excess of the sum of Buyer’s then-required Minimum Liquid Collateral and Additional Liquid Collateral.

The “**Collateral Requirement**” for Seller at any point in time after the Initial Delivery Date is the lower of (i) the positive amount of the Marked-to-Market Value as determined pursuant to Attachment 2; and (ii) a maximum amount determined as \$200/kW (\$80/kW for intermittent renewable energy projects) times the Guaranteed Capacity; provided, in the event that Seller is not investment grade rated and does not provide a guarantee from an entity that is investment grade rated, the Collateral Requirement shall be \$200/kW (\$80/kW for intermittent renewable energy projects) multiplied by the Guaranteed Capacity for which Seller shall provide Buyer with a Letter of Credit.

Lien on Project In addition to any other Collateral required to be provided by Seller, Seller shall grant to Buyer a perfected lien on and security interest in all of Seller’s right, title and interest in and to the Project, which lien shall be subordinate only to the lien, if any, granted to persons not related to Seller that provide construction or term financing for the Project. Such lien and security interest shall be created and evidenced by documentation satisfactory to Buyer.

Confidentiality Seller shall maintain all commercial terms confidential for the greater of

- (1) the term of the Confidentiality Agreement dated _____ by and between Seller and Buyer, if any;
- (2) three years from the date of this Term Sheet; or
- (3) the Contract Term.

Neither Party shall disclose the terms or conditions of this Term Sheet to a third party (other than either Party’s employees, lenders, counsel, accountants, advisors or ratings agencies) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request applicable to such Party, or as Buyer deems necessary in order to demonstrate the reasonableness of its actions to duly authorized governmental or regulatory agencies, including, without limitation, the PSC,

the Delaware Department of Natural Resources and Environmental Control, and any other regulatory agency which claims jurisdiction over the subject matter of the Definitive Agreement or its subject matter; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section. This confidentiality provision shall become binding upon delivery of the completed Term Sheet.

**Dispute
Resolution:**

All disputes that cannot be resolved after referral to senior management of the Seller and Buyer shall be resolved by arbitration conducted in Washington, DC under the rules of the American Arbitration Association before a panel of three (3) arbitrators.

**Other Terms and
Conditions**

The Parties will be expected to make customary representations and warranties.

The Definitive Agreement will be governed by Delaware law.

Seller will agree to maintain customary books and records, including without limitation, operating logs, meter readings and financial records and make such books and records available for audit.

Seller will agree to maintain adequate property and liability insurance.

Each Party will provide indemnities customary for transactions similar to the Transaction.

The right of Seller to assign the Definitive Agreement or to transfer control of the Units to another person, whether or not affiliated, shall be subject to Buyer's consent, not to be unreasonably withheld upon a showing of the proposed assignee's technical and financial capability to fulfill the requirements of Seller. Change in the ownership of or the ownership interests in, Seller shall not be treated as either an assignment of the Definitive Agreement or a transfer of control of the Units for purposes of any such consent requirement. Assignment of the Definitive Agreement and liens upon the Units for purposes of project financing shall be permitted ; and Buyer will execute such additional consents as reasonably required by Seller in connection with such assignment; provided that Buyer shall not be required to consent to any additional terms or conditions which materially diminish Buyer's rights or materially increase Buyer's obligations under the

Definitive Agreement; and provided further, Seller shall be responsible for Buyer's reasonable costs associated with review, negotiation, execution and delivery of such documents, including attorneys' fees.

Seller will agree that the Units and the Products will be free of liens other than permitted liens as agreed to by the Parties.

Each Party shall be responsible for taxes assessed upon it, including any new taxes, except carbon or Btu taxes, that may be imposed during the Contract Term. [Bluewater reiterates its comments above on the "pass through"]

Interest shall accrue on all obligations not paid when due at the rate of ___% per annum. After the occurrence of an Event of Default, interest shall accrue on all obligations at the rate of ___% per annum.

Seller agrees to pay to the Buyer, upon written demand from the Buyer from time to time, the amount of all expenses, including reasonable attorneys' fees and expenses, paid or incurred by the Buyer (i) after any of the obligations are not paid or performed when due (whether by demand, acceleration or otherwise), which arise as a result of such failure to pay or perform, and (ii) after a default or an Event of Default shall occur, which arise as a result of such Event of Default. Seller also agrees to pay to the Buyer, upon written demand by the Buyer from time to time, interest on the outstanding amount of such expenses paid by the Buyer, from the date of the Buyer's demand for payment of such expenses until the same are paid in full, at the highest rate provided herein.

Regulatory Approval

Regulatory Approval shall consist of approval of the terms of the Definitive Agreement without modification by the PSC, the Delaware Energy Office or any other regulatory agency which claims jurisdiction over the contract ("PSC Order:"). The occurrence of the Effective Date is subject to Regulatory Approval and receipt by Buyer of a final nonappealable PSC Order (not appealed within 30 days). If Regulatory Approval is not received within sixty (60) days after execution of the Definitive Agreement, a mutual right to terminate the Definitive Agreement, without liability to either party, shall exist provided that such right is exercised within thirty (30) days after the deadline. If the Effective Date is delayed by a timely appeal of the Regulatory Approval, the Effective Date shall occur on the date the PSC Order is upheld on appeal and is no longer subject to appeal; provided, if the Effective Date does not occur within [24] months of the PSC Order, either party (except for an appealing party) may terminate the Definitive Agreement by providing written notice to the other party within the following thirty (30) days.

**Forward
Contract**

The Parties acknowledge and agree that the Definitive Agreement and the transactions consummated thereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Seller is a “forward merchant” within the meaning of the United States Bankruptcy Code.

**Non-Inclusive;
Non-Binding;
Definitive
Agreement**

This Term Sheet does not contain all matters upon which agreement must be reached in order for the Transaction to be completed. Except for the Confidentiality provision herein, this Term Sheet does not create and is not intended to create a binding and enforceable contract between the Parties with respect to the Transaction. Refer to the RFP for a description of the purpose and effect of this Term Sheet. A binding commitment with respect to the Transaction can only result from the execution and delivery of a Definitive Agreement satisfactory to Delmarva and the satisfaction of the conditions set forth therein, including the approval of such Definitive Agreement by all applicable governing and/or regulatory body(ies) and the management of Delmarva, which approval shall be in the sole subjective discretion of the respective governing and/or regulatory body(ies) and management.

Attachment 1 – Seller Credit Limit Calculation

Buyer shall determine the maximum amount of unsecured credit allowed as a share of Seller's (or its guarantor's) total tangible net worth, depending on the entity's long-term senior unsecured credit rating, as shown below. The amount of unsecured credit allowed shall be the product of the total tangible net worth (TNW) times that percentage specified below, up to the amount of the cap specified below applicable to given credit rating.

S&P Rating	Moody's Rating	Fitch Rating	Total Tangible Net Worth	Seller Credit Limit (Cap)
AAA to AA-	Aaa to Aa3	AAA to AA-	10%	\$50,000,000
A+ to A-	A1 to A3	A+ to A-	8%	\$40,000,000
BBB+ to BBB	Baa1 to Baa2	BBB+ to BBB	6%	\$30,000,000
BBB-	Baa3	BBB-	4%	\$20,000,000

If there is a difference among the ratings of the listed rating agencies, the lowest rating shall be used. Seller or the entity guarantying its obligations under the Definitive Agreement must have a credit rating from one of these three agencies, or provide 100% of the required security in the form of a letter of credit.

The Seller Credit Limit shall be recalculated, and the amount of the Letters of Credits covering the Minimum Liquid Collateral and the Additional Liquid Collateral shall be appropriately adjusted, based on Seller's (or the guarantor's) most recent fiscal year-end audited financial statements or within five (5) business days of any change in Seller's (or the guarantor's) long-term senior unsecured debt rating.

Attachment 2—Marked-to-Market Determination

The Marked-to-Market Value as of any week during the Services Term will be equal to the net sum of the following:

1. Net Capacity Value: the gross capacity value will be the PJM RPM capacity (or a mutually agreed-upon equivalent) for the delivery year times the contract Net Capability obligations expressed in kW. The gross capacity value will be measured for each month of the rolling 24-month period following the week for which the calculation is being made. To determine the Net Capacity Value, from such gross capacity value will be subtracted the aggregate capacity payments for each month of such rolling 24-month period expected under the Definitive Agreement for the Capacity Seller is obligated to deliver.
2. Net Energy Value: the gross energy value will be the NYMEX Henry Hub end-of-day monthly forward price in (\$/mmbtu) times an 8,000 BTU/kWh implied heat rate divided by 1000 times the anticipated quantity of energy to be delivered in each month of the rolling 24-month period following the week for which the calculation is being made. Delmarva reserves the right to change the implied heat rate subject to the nature of the PPA agreement. To determine the Net Energy Value, from such gross energy value will be subtracted the aggregate energy payments anticipated for the quantity of energy to be delivered in each month of the rolling 24-month period under the Definitive Agreement for the energy Seller is expected to deliver.

Attachment 3—Calculation of Monthly Contract Capacity Payment

For projects other than intermittent renewable energy projects, the bidder's proposed capacity payments will be multiplied by Delmarva's entitlement to capacity from the project times the lesser of the project's contract capacity and the project's rated summer net capability, which will then be multiplied by an Availability Adjustment Factor. The Availability Adjustment Factor ("AAF") will be the rolling average of the Monthly Adjusted Availability Factors ("MAAFs") for the previous 12 months, subject to the following: (a) it will be capped at 1.05 and (b) for each percentage that the rolling average of the MAAFs is below 0.90 for the previous 12 months, there will be a 3% reduction in the AAF (but the AAF shall never be less than 0.0). For example, if the 12-month rolling average of the MAAFs is 0.85, the AAF will be 0.75. A complete detailed definition will be set forth in the PPA.

The Monthly Adjusted Availability Factor ("MAAF") shall be the product of the Equivalent Availability Factor ("MEAF") for the particular month multiplied by the Monthly Adjustment Factor ("MAF") divided by the Adjusted Target Equivalent Availability Factor ("ATEAF"). $MAAF = (MEAF * MAF) / ATEAF$.

The ATEAF is equal to the bidder's annual Target Equivalent Availability Factor ("TEAF") with a seasonally adjusted target as follows:

January-February	+3%
March-May	-3%
June-September	+3%
October-November	-3%

For example, if the TEAF is 90%, the ATEAF for June would be 93%.

MEAF is the Equivalent Availability Factor ("EAF") for the month, except if the project's monthly average off-peak hourly EAF exceeds the monthly average on-peak hourly EAF, the EAF for on-peak hours will be used in determining MEAF for the month. For example, if the EAF in June is 90%, but the EAF in off-peak hours is 95% and the EAF in on-peak hours is 85%, the MEAF in June will be 85%.

MAF is the Monthly Adjustment Factor. Together, the MAF, the ATEAF, and the MEAF emphasize the higher value of available capacity and energy during peak seasonal and hourly periods.

MAF is as follows:

January	1.0
February	1.0
March	0.9
April	0.8
May	0.8
June	1.2
July	1.3
August	1.3
September	1.2

October	0.8
November	0.8
December	0.9

A standard industry definition for EAF will be utilized and will be set forth in the PPA.

Example: ATEAF in June is 93%. MEAF in June is 85%. MAF= 1.2. $MEAF = (.85 * 1.2) / .93 = 1.097$.

For the first 12 operating months of the project, AAF shall be calculated by using historical operating data for the plant where available and by using proxy data for other months assuming that the plant has achieved the ATEAF for such months. For example, if the project achieves commercial operation in March and has operated through December, the capacity payments for December will be based on an AAF calculated with plant performance data from March through December with a MAAF of 1.0 for January and February.